

ARKANSAS SUPREME COURT

No. CR 08-160

LEDELL LEE
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered September 18, 2008

PRO SE MOTION TO REMAND TO
CIRCUIT COURT [CIRCUIT COURT
OF PULASKI COUNTY, CR 93-1249,
HON. JOHN W. LANGSTON, JUDGE]

MOTION DENIED.

PER CURIAM

In 1995, a jury found appellant Ledell Lee guilty of capital murder and sentenced him to death. This court affirmed the judgment. *Lee v. State*, 327 Ark. 692, 942 S.W.2d 231 (1997). Appellant sought in the trial court, and was denied, postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.5. This court affirmed the order denying postconviction relief. *Lee v. State*, 343 Ark. 702, 38 S.W.3d 334 (2001). Appellant subsequently filed a motion in this court that requested recall of the mandate as to his Rule 37.5 proceeding on the basis that counsel for the Rule 37.5 proceeding was ineffective because that attorney was impaired by a substance abuse problem. We granted the motion. *Lee v. State*, 367 Ark. 84, 238 S.W.3d 52 (2006).

New counsel to represent appellant were appointed in accord with that decision, and following additional proceedings under Rule 37.5, the trial court again denied postconviction relief. Counsel for appellant have lodged an appeal of that order in this court and the briefs have been filed. Appellant has filed the instant pro se motion requesting the matter be remanded back to the trial court for further proceedings.

Appellant alleges in his pro se motion that his new counsel were ineffective for failing to raise a number of claims, for failing to adequately investigate these claims or use information obtained from the investigation that was performed, and for failing to request certain scientific tests. Appellant complains that counsel did not comply with his wishes in regard to these actions. Although he alleges ineffective assistance by counsel during the proceedings in circuit court, appellant does not in his motion request that his attorneys be relieved or contend either that he requested that his attorneys be relieved below or that the issue of ineffective assistance of the attorneys in his second Rule 37.5 proceeding was addressed by the trial court.

We are not presented here with unique circumstances as was the situation in appellant's case when we granted the motion to recall the mandate. There, counsel had specifically admitted to being impaired during appellant's Rule 37.5 proceedings and it was clear that impairment was a defect in counsel's performance. That is not the type of circumstances here. No defect is so readily apparent, and appellant's pro se claims of ineffective assistance have not been addressed in the trial court. This court, even in a death case, is not in a position to address typical claims of ineffective assistance of counsel unless the issue has been considered by the trial court or otherwise factually developed. *See McClina v. State*, 354 Ark. 384, 123 S.W.3d 883 (2003); *see also Maxwell v. State*, 359 Ark. 335, 197 S.W.3d 442 (2004).

Moreover, at this stage in the proceedings, the issues raised in appellant's pro se pleadings amount to little more than an attempt to substitute appellant's own judgment for that of his attorneys. An appellant is not entitled to accept appointment of counsel to represent him, and also proceed pro se. *Brewer v. State*, 371 Ark. 532, ____ S.W.3d ____ (2007) (per curiam) (citing *Hamilton v. State*, 348 Ark. 532, 74 S.W.3d 615 (2002)). Appellant has provided no basis either for this court to

address the merits of his specific claims or to remand to the trial court. Accordingly, we deny the motion.

Motion denied.

Glaze, J., not participating.